IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10778 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RATNADEEP GHODASAR ASSOCIATION

Versus

AHMEDABAD MUNICIPAL CORP.

Appearance:

MR MITUL K SHELAT for Petitioner No. 1-2

MR RM CHHAYA for Respondent No. 1

MR PJ MEHTA for Respondent No. 2

MR RR MARSHALL for Respondent No. 2

Mr.M.K. Dagli, Assistant GOVERNMENT PLEADER, for Respondent No. 3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/10/2002

ORAL JUDGEMENT

Rule. Mr.Chhaya, Mr.P.J. Mehta and Mr.Marshall, and Mr.M.K. Dagli, learned AGP, waive service of rule on behalf of respondents 1, 2 and 3, respectively. With the consent of the parties, today, the matter is taken up for final hearing.

The petitioner-Association has challenged the notice issued by the Corporation, Annexures 'G' and 'I'. By the impugned notice, the members of the petitioner-Association are asked to hand over the possession of the area, which is in their possession for the purpose of implementing the final Town Planning Scheme, being Ghodasar No.1. It is not in dispute that the Corporation has, till today, not implemented the said scheme and on behalf of the Corporation, the said action is sought to be justified on the ground that some litigations were pending before different courts, etc. Mr.Shelat, learned Advocate for the petitioner, has fairly stated that the petitioner is willing to hand over the area, which is in its occupation, in order to give effect to the final T.P. Scheme, but it is argued that, simultaneously, the members of the petitioner-Association are required to be handed over the area, which they are entitled as per the scheme. For that purpose, both the sides have relied upon the map at Annexure 'D', page 34. As per the said map, part of area is required to be handed over by the petitioner to the Corporation and, simultaneously, the Corporation is also required to hand over certain area to the members of the petitioner-Association in order to give complete effect to the scheme in question. Since the Corporation has not taken any concrete action for implementing the aforesaid scheme and since it is its statutory duty to implement the Scheme, it is directed that the Corporation will take prompt action for implementing the aforesaid scheme in question and appropriate action will be taken by the Corporation for handing over the area, which is required to be handed over to the members of the petitioner-Association as per the said T.P. scheme and at the time of handing over the possession to the petitioner-Association, the petitioner-Association also will simultaneously hand over the possession, which is required to be handed over to the Corporation as per the tracing at page 34. The Corporation is directed to expedite the said procedure and shall implement the aforesaid scheme accordingly by handing over the area which is required to be handed over to the petitioner, latest by 31st March, 2003, without any further delay in this behalf and the petitioner-Association will hand over the area which is required to be handed over to the Corporation for the purpose of implementing the Scheme. The petitioner-Association may file appropriate undertaking in that behalf before this Court within two weeks from today. Mr.Chhaya has assured the Court that the Corporation will take prompt and appropriate action in this behalf and he has also conceded that it is the statutory duty of the Corporation to see that the Scheme

is implemented, which is not implemented so far, because of various factors.

Over and above the constructed shops, there is some open area, which is in possession of the members of the present petitioner-Association, which is part and parcel of the T.P. Road. It is argued by Mr.Chhaya that, at least that much portion may be handed over to the Corporation so that it can start working on the scheme in question by utilising the same for the purpose of the T.P. road. The said argument of Mr.Chhaya is valid. So, while retaining the part of the portion which is in possession of the petitioner, wherein constructed shops are available, the open area may be handed over to the Corporation forthwith and it will be open for the Corporation to take possession and Mr.Shelat has fairly stated that the said open area will be handed over to the Corporation so that the Corporation can start working on the Scheme in question.

Under the above circumstances, the Corporation is directed to comply with the directions given in this order and is directed to take appropriate action in this connection for handing over the possession of the area, which is required to be given to the petitioner-Association by the aforesaid date.

Till the aforesaid arrangement is worked out, as indicated above, the petitioner is directed to maintain status quo and the petitioner-Association or its members may not transfer or alienate the area in question to any one till the Scheme is implemented by the Corporation.

This petition is accordingly allowed to the aforesaid extent. Rule is made absolute accordingly, with no order as to costs.

(P.B. Majmudar, J.)

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(apj)